

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0396
Sales and Use Tax
For the Years 2000-2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax- Imposition

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-3-2(a), IC 26-1-2-401(2),

The taxpayer protests the imposition of sales tax.

II. Tax Administration- Ten Percent (10%) Negligence Penalty and Interest

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b), 45 IAC 15-11-2(c), IC 6-8.1- 10-1(a).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty and interest.

STATEMENT OF FACTS

The taxpayer is an Illinois corporation that makes sales to Indiana customers. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales tax, interest, and penalty for the tax period 2000-2002. The taxpayer paid a portion of the assessment and protested the remainder. At the taxpayer's request, this Letter of Findings is based upon the documentation in the file.

I. Sales and Use Tax-Imposition

The taxpayer operated as a retail merchant selling office equipment, office supplies and office furniture from their store in Illinois. The taxpayer used its own delivery vehicles to deliver merchandise to Indiana customers. The taxpayer was not registered to collect Indiana sales tax for the period under review. It did not collect or remit any sales or use tax to Indiana. The taxpayer has now applied for a Registered Retail Merchants Certificate.

The department assessed sales tax on the sales of merchandise that was delivered by the taxpayer to Indiana customers. The taxpayer protests some of these assessments.

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC 6-8.1-5-1 (b).

Indiana imposes a sales tax on retail sales of tangible personal property in Indiana. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state unless the sale qualifies for a statutory exemption. IC 6-2.5-2-1. Indiana also imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana if sales tax was not paid at the time of purchase. IC 6-2.5-3-2 (a).

The Indiana law concerning the passing of title of goods to the buyer states that, "Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods. . . IC 26-1-2-401(2). Title to the merchandise that the taxpayer delivered in its own delivery trucks to Indiana customers was passed in Indiana. Therefore these sales were Indiana sales which the taxpayer had to collect and remit sales tax unless there was an exemption.

The taxpayer first protested that Indiana sales tax was incorrectly assessed on an invoice dated October 27 2004 in the amount of \$4,494. This invoice is found in Taxpayer's Attachment 12. This invoice represents the sale of certain office equipment to an Illinois purchaser and that Illinois sales tax was collected. The Illinois purchaser later leased the office equipment to an Indiana company. In that case, the sale took place in Indiana and the taxpayer correctly collected and remitted the Illinois sales tax to Illinois. The taxpayer's request to have this amount deducted from the audit assessment is sustained. This adjustment amounts to an amount of \$224.70 to be deducted from the audit assessment.

The taxpayer also protests the sales tax assessed on an invoice dated December 18, 2000 representing a sale of equipment to an exempt user in Indiana. The taxpayer provided at Attachment 11 a copy of the customer's Indiana Tax Exemption Certificate. The taxpayer's protest to the assessment of \$143.50 is sustained.

The taxpayer also protested the assessment of sales tax on sales to several purchasers where the tax has already been paid. Therefore, the taxpayer is not now liable for sales tax on these sales. The sales tax associated with these sales is \$2,555.25. This point of the taxpayer's protest is sustained.

The taxpayer also protests the placement of an exempt sale in December, 2001 rather than in January, 2002. The invoice (found at Attachment 13) was dated December 31, 2001. The taxpayer provided adequate substantiation that the amount of the invoice should have been included in the January 2002 exempt sales. This point of protest is sustained and results in a \$24.10 deduction from the tax assessment.

FINDING

The taxpayer's protests are sustained.

II. Tax Administration- Ten Percent (10%) Negligence Penalty and Interest

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The department has the authority to waive the negligence penalty pursuant to the provisions of 45 IAC 15-11-2(c) as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. . .

In this case, the taxpayer submitted substantial documentation to indicate that its failure to collect and remit Indiana sales tax was due to reasonable cause.

The taxpayer also contends that the department should abate the interest imposed in this matter.

The department imposes interest pursuant to IC 6-8.1-10-1(a). The department is specifically denied the ability to waive interest at IC 6-8.1-10-1(e). Therefore, the department cannot waive the interest assessed against the taxpayer in this instance. The taxpayer's protest to the imposition of interest is denied.

FINDING

The taxpayer's protest to the imposition of the penalty is sustained. The taxpayer's protest to the imposition of interest is denied.